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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,841	11/25/2005	Michael Burnester	H01.2-12068	3686
490	7590	09/20/2006	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			MORAN, KATHERINE M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/549,841

Applicant(s)

BURMESTER, MICHAEL

Examiner

Katherine Moran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/27/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's pre-amendment of 9/14/05 is acknowledged. Claims 1 and 3-11 were amended, with claims 1-11 pending.

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

2. The disclosure is objected to because of the following informalities: pg.7, line 9: delete "flap part 24" and insert --flap part 22--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 recites "preferably". This is indefinite because it is not clear if the elements recited after "preferably" are to be considered as part of the claimed device. Claim 8 contains the trademark/trade name Irocin. Where a trademark or trade name is used in a claim as a limitation to identify or describe a

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particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a particular pigment and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3-5, and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Fay (U.S. 4,192,017). Fay discloses the invention as claimed. Fay teaches a hat part 12 made of a plastic material. With regard to the performance properties of the claimed plastic as recited in claims 1 and 9-11, Applicant's claims recite thermoplastic urethane based on polyether or polyester. Thus, any hat part formed from these materials is expected to perform in the same way as outlined by the claims. The hat part is provided as a hat flap which has a portion resting against the head of a person bearing the hat and a distant portion, a hat material attached to the resting portion. The

plastic material is partially or completely transparent. Fay teaches that the visor may be tinted

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fay in view of Gordon et al. (Gordon, U.S. 6,170,084). Fay discloses the invention substantially as claimed. However, Fay doesn't teach that the plastic material is thermoplastic urethane, based on polyether or polyester. Gordon teaches that it is known to form visor 210 from thermoplastic urethane based on polyether or polyester. Urethane is known as a resilient material resistant to weathering and abrasion. Therefore, it would have been obvious to form Fay's visor from thermoplastic urethane to provide a highly resilient and long-lasting visor device.

8. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fay in view of Bree (U.S. 4,767,647). Fay discloses the invention substantially as claimed. However, Fay doesn't teach plastic material that is partially or completely metallised, or foils completely or partially injected into the plastic material. Fay's hat part includes these elements to provide an optical effect. It is common in the art to provide hat parts with emblems to achieve a desired aesthetic effect. Bree teaches an emblem formed from a decorative, embossed foil 18 that is injected with a plastic

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material 16. Therefore, it would have been obvious to provide the emblem of Bree to the hat part since the emblem is easily manufactured and lends desired optical effects to the hat.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fay in view of Youmans et al (Youman, U.S. 6,615,409). Fay discloses the invention substantially as claimed. However, Fay doesn't teach pigments are incorporated into the plastic material. Youmans teaches that it is known to provide numerous plastic lenses, including visors, with pigments incorporated into the plastic material (col.2, lines 9-11 and col.5, line 1-6). Therefore, it would have been obvious to one of ordinary skill in the art to provide Fay's visor with the pigments as taught by Youmans in order to provide a high contrast resolution lens.

Conclusion

10. The prior art made of record on the attached PTO-892, and not relied upon, is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-4983. The official and after final fax number for the organization where this application is assigned is (571) 273-8300.


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General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

September 14, 2006



Katherine Moran

Primary Examiner, AU 3765